

By: Hughes

H.B. No. 3325

A BILL TO BE ENTITLED

AN ACT

relating to advance directives or health care or treatment decisions made by or on behalf of patients.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 166.039, Health and Safety Code, is amended by amending Subsection (g) and adding Subsection (h) to read as follows:

(g) A person listed in Subsection (b) who wishes to challenge a treatment decision made under this section must apply for temporary guardianship under Section 875, Texas Probate Code, and allege that the treatment decision:

(1) violates the patient's directions provided in an advance directive or as otherwise known;

(2) if the patient's directions are unknown, is inconsistent with the patient's known values; or

(3) if the matter cannot be determined using a standard described by Subdivision (1) or (2), is clearly inconsistent with the patient's best interests, beginning with a presumption for life.

(h) A physician, medical or ethics committee, or health care facility treating a patient may participate as a party in the guardianship proceedings described by Subsection (g). The court may waive applicable fees in that proceeding.

SECTION 2. Section 166.045(c), Health and Safety Code, is

1 amended to read as follows:

2 (c) If an attending physician refuses to comply with a
3 directive or treatment decision requesting the provision of
4 life-sustaining treatment to a patient and either the attending
5 physician does not wish to follow the procedure established under
6 Section 166.046 or the procedure is not applicable, life-sustaining
7 treatment shall be provided to the patient [~~, but only~~] until [~~a~~
8 ~~reasonable opportunity has been afforded for the transfer of~~] the
9 patient is transferred to another physician or health care facility
10 willing to comply with the directive or treatment decision.

11 SECTION 3. Sections 166.046(b) and (e), Health and Safety
12 Code, are amended to read as follows:

13 (b) The patient or the person responsible for the health
14 care decisions of the individual who has made the decision
15 regarding the directive or treatment decision:

16 (1) may be given a written description of the ethics or
17 medical committee review process and any other policies and
18 procedures related to this section adopted by the health care
19 facility;

20 (2) shall be informed of the committee review process
21 not less than 48 hours before the meeting called to discuss the
22 patient's directive, unless the time period is waived by mutual
23 agreement;

24 (3) at the time of being so informed, shall be
25 provided:

26 (A) a copy of the appropriate statement set forth
27 in Section 166.052; and

1 (B) a copy of the registry list of health care
2 providers and referral groups that have volunteered their readiness
3 to consider accepting transfer or to assist in locating a provider
4 willing to accept transfer that is posted on the website maintained
5 by the Texas Health Care Information Council under Section 166.053;
6 and

7 (4) is entitled to:

8 (A) attend the meeting and be represented by
9 legal counsel at the meeting; and

10 (B) receive a written explanation of the decision
11 reached during the review process.

12 (e) If the patient or the person responsible for the health
13 care decisions of the patient is requesting life-sustaining
14 treatment that the attending physician has decided and the review
15 process has affirmed is inappropriate treatment, the patient shall
16 be given available life-sustaining treatment pending transfer
17 under Subsection (d). The patient is responsible for any costs
18 incurred in transferring the patient to another facility. [~~The~~
19 ~~physician and the health care facility are not obligated to provide~~
20 ~~life-sustaining treatment after the 10th day after the written~~
21 ~~decision required under Subsection (b) is provided to the patient~~
22 ~~or the person responsible for the health care decisions of the~~
23 ~~patient unless ordered to do so under Subsection (g).~~]

24 SECTION 4. Subchapter B, Chapter 166, Health and Safety
25 Code, is amended by adding Section 166.0465 to read as follows:

26 Sec. 166.0465. COURT PROCEEDINGS; APPEAL; FILING FEE AND
27 COURT COSTS. (a) A patient, the person responsible for the

1 patient's health care decisions, or the person who has made the
2 decision regarding the advance directive or treatment decision may
3 file a motion for injunctive relief in any county court at law,
4 court having probate jurisdiction, or district court, including a
5 family district court, based on an allegation that a physician,
6 ethics or medical committee, or health care facility is violating
7 or is threatening to violate the patient's rights under this
8 chapter and shall immediately serve a copy of the motion on the
9 defendant.

10 (b) The court shall promptly set a time for a hearing on a
11 motion filed under Subsection (a) and shall keep a record of all
12 testimony and other oral proceedings in the action. The court shall
13 rule on the motion and issue written findings of fact and
14 conclusions of law not later than the fifth business day after the
15 date the motion is filed with the court. The time for the hearing
16 and the date by which the court must rule on the motion may be
17 extended by stipulation of the parties, with the approval of the
18 court.

19 (c) Any party may appeal the decision of the court under
20 Subsection (b) to the court of appeals having jurisdiction over
21 civil matters in the county in which the motion was filed by filing
22 a notice of appeal with the clerk of the court that ruled on the
23 motion not later than the first business day after the date the
24 decision of the court was issued.

25 (d) On receipt of a notice of appeal under Subsection (c),
26 the clerk of the court that ruled on the motion shall deliver a copy
27 of the notice of appeal and record on appeal to the clerk of the

1 court of appeals. On receipt of the notice and record, the clerk of
2 the court of appeals shall place the appeal on the docket of the
3 court, and the court of appeals shall promptly issue an expedited
4 briefing schedule and set a time for a hearing.

5 (e) The court of appeals shall rule on an appeal under
6 Subsection (d) not later than the fifth business day after the date
7 the notice of appeal is filed with the court that ruled on the
8 motion. The times for the filing of briefs, the hearing, and the
9 date by which the court of appeals must rule on the appeal may be
10 extended by stipulation of the parties, with the approval of the
11 court of appeals.

12 (f) Any party may file a petition for review of the decision
13 of the court of appeals with the clerk of the supreme court not
14 later than the third business day after the date the decision of the
15 court of appeals was issued. Other parties may file responses not
16 later than the third business day after the date the petition for
17 review was filed. The supreme court shall grant, deny, refuse, or
18 dismiss the petition for want of jurisdiction, without regard to
19 whether a reply to any response has been filed, not later than the
20 third business day after the date the response was due. If the
21 supreme court grants the petition for review, it shall exercise its
22 sound discretion in determining how expeditiously to hear and
23 decide the case.

24 (g) If a motion is filed under Subsection (a) and the
25 dispute concerns whether life-sustaining treatment should be
26 provided to the patient, life-sustaining treatment shall be
27 provided through midnight of the day by which a notice of appeal

1 must be filed unless the court directs that it be provided for a
2 longer period. If a notice of appeal under Subsection (c) is filed,
3 life-sustaining treatment shall be provided through midnight of the
4 day by which a petition for review to the supreme court must be
5 filed, unless the court of appeals directs that it be provided for a
6 longer period. If a petition for review to the supreme court is
7 filed under Subsection (f), life-sustaining treatment shall be
8 provided through midnight of the day on which the supreme court
9 denies, refuses, or dismisses the petition or issues a ruling on the
10 merits, unless the supreme court directs that it be provided for a
11 longer period.

12 (h) A filing fee or court cost may not be assessed for any
13 proceeding in a trial or appellate court under this section.

14 SECTION 5. Section 166.051, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 166.051. LEGAL RIGHT OR RESPONSIBILITY NOT AFFECTED.
17 This subchapter does not impair or supersede any legal right or
18 responsibility a person may have to effect the withholding or
19 withdrawal of life-sustaining treatment in a lawful manner,
20 provided that if an attending physician or health care facility is
21 unwilling to honor a patient's advance directive or a treatment
22 decision to provide life-sustaining treatment, life-sustaining
23 treatment must [~~is required to~~] be provided to the patient in
24 accordance with this chapter [~~, but only until a reasonable~~
25 ~~opportunity has been afforded for transfer of the patient to~~
26 ~~another physician or health care facility willing to comply with~~
27 ~~the advance directive or treatment decision].~~

1 SECTION 6. Sections 166.052(a) and (b), Health and Safety
2 Code, are amended to read as follows:

3 (a) In cases in which the attending physician refuses to
4 honor an advance directive or treatment decision requesting the
5 provision of life-sustaining treatment, the statement required by
6 Section 166.046(b)(3)(A) [~~166.046(b)(2)(A)~~] shall be in
7 substantially the following form:

8 When There Is A Disagreement About Medical Treatment: The
9 Physician Recommends Against Life-Sustaining Treatment That You
10 Wish To Continue

11 You have been given this information because you have
12 requested life-sustaining treatment,* which the attending
13 physician believes is not appropriate. This information is being
14 provided to help you understand state law, your rights, and the
15 resources available to you in such circumstances. It outlines the
16 process for resolving disagreements about treatment among
17 patients, families, and physicians. It is based upon Section
18 166.046 of the Texas Advance Directives Act, codified in Chapter
19 166, [~~of the Texas~~] Health and Safety Code.

20 When an attending physician refuses to comply with an advance
21 directive or other request for life-sustaining treatment because of
22 the physician's judgment that the treatment would be inappropriate,
23 the case will be reviewed by an ethics or medical committee.
24 Life-sustaining treatment will be provided through the review.

25 You will receive notification of this review at least 48
26 hours before a meeting of the committee related to your case. You
27 are entitled to attend the meeting and be represented by legal

1 counsel at the meeting. With your agreement, the meeting may be
2 held sooner than 48 hours, if possible.

3 You are entitled to receive a written explanation of the
4 decision reached during the review process.

5 If after this review process both the attending physician and
6 the ethics or medical committee conclude that life-sustaining
7 treatment is inappropriate and yet you continue to request such
8 treatment, then the following procedure will occur:

9 1. The physician, with the help of the health care facility,
10 will assist you in trying to find a physician and facility willing
11 to provide the requested treatment.

12 2. You are being given a list of health care providers and
13 referral groups that have volunteered their readiness to consider
14 accepting transfer, or to assist in locating a provider willing to
15 accept transfer, maintained by the Texas Health Care Information
16 Council. You may wish to contact providers or referral groups on
17 the list or others of your choice to get help in arranging a
18 transfer.

19 3. The patient will [~~continue to~~] be given life-sustaining
20 treatment until he or she can be transferred to a willing provider
21 [~~for up to 10 days from the time you were given the committee's~~
22 ~~written decision that life-sustaining treatment is not~~
23 ~~appropriate~~].

24 4. If a transfer can be arranged, the patient will be
25 responsible for the costs of the transfer.

26 5. The law gives you a right to seek a court order to require a
27 physician, ethics or medical committee, or health care facility to

1 comply with your rights under the Texas Advance Directives Act if
2 the physician, committee, or facility is violating or threatening
3 to violate a provision of that Act. You may wish to talk to legal
4 counsel for further information about your right to seek a court
5 order [~~If a provider cannot be found willing to give the requested~~
6 ~~treatment within 10 days, life-sustaining treatment may be~~
7 ~~withdrawn unless a court of law has granted an extension.~~

8 ~~[6. You may ask the appropriate district or county court to~~
9 ~~extend the 10-day period if the court finds that there is a~~
10 ~~reasonable expectation that a physician or health care facility~~
11 ~~willing to provide life-sustaining treatment will be found if the~~
12 ~~extension is granted].~~

13 *"Life-sustaining treatment" means treatment that, based on
14 reasonable medical judgment, sustains the life of a patient and
15 without which the patient will die. The term includes both
16 life-sustaining medications and artificial life support, such as
17 mechanical breathing machines, kidney dialysis treatment, and
18 artificial nutrition and hydration. The term does not include the
19 administration of pain management medication or the performance of
20 a medical procedure considered to be necessary to provide comfort
21 care, or any other medical care provided to alleviate a patient's
22 pain.

23 (b) In cases in which the attending physician refuses to
24 comply with an advance directive or treatment decision requesting
25 the withholding or withdrawal of life-sustaining treatment, the
26 statement required by Section 166.046(b)(3)(A) shall be in
27 substantially the following form:

1 withdraw life-sustaining treatment, then the following procedure
2 will occur:

3 1. The physician, with the help of the health care facility,
4 will assist you in trying to find a physician and facility willing
5 to withdraw or withhold the life-sustaining treatment.

6 2. You are being given a list of health care providers and
7 referral groups that have volunteered their readiness to consider
8 accepting transfer, or to assist in locating a provider willing to
9 accept transfer, maintained by the Texas Health Care Information
10 Council. You may wish to contact providers or referral groups on
11 the list or others of your choice to get help in arranging a
12 transfer.

13 3. The law gives you a right to seek a court order to require
14 a physician, ethics or medical committee, or health care facility
15 to comply with your rights under the Texas Advance Directives Act if
16 the physician, committee, or facility is violating or threatening
17 to violate a provision of that Act. You may wish to talk to legal
18 counsel for further information about your right to seek a court
19 order.

20 *"Life-sustaining treatment" means treatment that, based on
21 reasonable medical judgment, sustains the life of a patient and
22 without which the patient will die. The term includes both
23 life-sustaining medications and artificial life support, such as
24 mechanical breathing machines, kidney dialysis treatment, and
25 artificial nutrition and hydration. The term does not include the
26 administration of pain management medication or the performance of
27 a medical procedure considered to be necessary to provide comfort

1 care, or any other medical care provided to alleviate a patient's
2 pain.

3 SECTION 7. Sections 166.046(f) and (g), Health and Safety
4 Code, are repealed.

5 SECTION 8. This Act takes effect immediately if it receives
6 a vote of two-thirds of all the members elected to each house, as
7 provided by Section 39, Article III, Texas Constitution. If this
8 Act does not receive the vote necessary for immediate effect, this
9 Act takes effect September 1, 2009.